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Minutes of the Commission Meeting Held on May 29, 2008 In the Stone Building New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: (P = Present; A = Appointed; E = Elected)

P James Athearn (E – Edgartown)	P Ned Orleans (A – Tisbury)
P John Breckenridge (A – Oak Bluffs)	P Jim Powell (A – West Tisbury)
P Christina Brown (E - Edgartown)	P Doug Sederholm (E – Chilmark)
P Peter Cabana (A – Tisbury)	P Susan Shea (A – Aquinnah)
- Martin Crane (A – Governor Appointee)	P Linda Sibley (E – West Tisbury)
P Mimi Davisson (E – Oak Bluffs)	P Paul Strauss (County Comm. Rep.)
- Mark Morris (A – Edgartown)	P Richard Toole (E – Oak Bluffs)
P Chris Murphy (A – Chilmark)	- Andrew Woodruff (E – West Tisbury)
P Katherine Newman (A – Aquinnah)	

Staff: Mark London (Executive Director); Bill Veno (Senior Planner); Paul Foley (DRI Coordinator); Bill Wilcox (Water Resource Planner).

The meeting was called to order at 7:40 p.m.

Doug Sederholm announced that the DEP Circuit Rider Program is giving a workshop on changes in the Massachusetts Building Code on Monday, June 16, at 11:00 a.m. at the Stone Building, at 11:00 a.m., for conservation commission members and other municipal officials.

1. MOUJABBER ADDITION: DRI NO. 607 – PUBLIC HEARING (CONT.)

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole

Richard Toole continued the public hearing to June 12th at 7:30 without taking any testimony. Several Town of Oak Bluffs boards are having an informal meeting with the applicant June 5th at 4:00 at the Senior Center. The Commission will have a site visit Thursday, June 5, at 6:30 p.m.

2. MINUTES

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole

2.1 February 7, 2008

Commissioners made the following corrections:

Line 180 . . . legislative capacity. . .

Linda Sibley moved, and it was duly seconded, to approve the minutes as corrected. In favor: 12. Opposed: 0. Abstentions: 2. The motion passed.

2.2 March 13, 2008

Commissioners made the following corrections:

Line 102 verify Jacksa spelling

Line 161 . . .a protocol to restore the areas disturbed by drilling and trenching.

Line 171 . . .there will be sufficient open space for construction staging . . .

Christina Brown moved, and it was duly seconded to approve the minutes as corrected. In favor: 13. Opposed: 0. Abstentions: 2. The motion passed.

3. OTHER

Paul Foley announced that the written record on the Martha's Vineyard Agricultural Society DRI has closed and Commissioners have a packet of three letters on the project. He will confirm that the Ag Society public hearing was posted properly.

There was a discussion of the DRI Checklist.

- **Christina Brown** reminded commissioners to continue to review the checklist. LUPC is working on some of the commercial definitions.
- **Ned Orleans** asked to schedule a date to review the DRI checklist. The next three or four LUPC meetings are fully scheduled.
- **Paul Foley** can send out summary of LUPC changes.

There was a discussion of containers.

- **Susan Shea** said during the Shirley's Hardware hearing the question of the definition of structure was raised. Aquinnah has a very clear definition of structure.
- **Mark London** said that counsel has provided a comment suggesting that the Commission should review the containers, even if the Town doesn't consider them to be structures. Notwithstanding how the Commission deals with the Shirley's proposal, it would be useful to discuss with planning boards how containers are dealt with.

4. NOVA VIDA CHURCH: DRI NO. 603 – PUBLIC HEARING (CONT.)

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole

For the applicant: Jamie Weisman (architect); Valci Carvalho (pastor)

Richard Toole read the hearing notice. The proposal is to locate a 150-seat church on the second floor of an existing building, with a footprint of 2560 sq. feet, which now houses a 28-child daycare on the first floor and would later house a community center in the basement.

4.1 Staff Report

Paul Foley said the staff and LUPC reports are the same as at the prior public hearing. He reported that the applicant submitted a packet this evening with a revised site plan, and offers.

4.2 Applicant's Presentation

James Weisman said they've changed the site plan a bit and developed a series of offers.

- In this plan, no trees are coming down.
- The new site plan shows the change to straight parking with no trees coming out. If there were to be a shared curb cut from the Mormon property, all circulation could take place.
- The graphics have changed to show where planting is being bolstered.

The handout tries to answer all the questions Commissioners might have.

- The number and attendance of church services is outlined.
- The community center use is outlined.
- The day care use is outlined. If the hospital daycare leaves, the desire is to continue a daycare with the same numbers.
- The Dover Amendment is described.
- A noise control letter is included.
- Traffic, parking, and access are described.
- The parking letter states that parking is for church purposes and there will be no overnight parking.
- The letter on access states that if the Mormons allow access, Nova Vida will use it.
- The landscape letter explains the landscape plan.
- Exterior lighting letter states that the exterior lighting is downlit and low.
- The fence letter describes the fence to the neighbor on the south. There will not be soccer net. There will be a three-foot high picket cedar fence. The fence will be 25-feet back from the property line. Between the fence and the property line will be heavy planting of indigenous trees.
- The curbcut letter states that the illegal curbcut will be eliminated with grading and planting.
- The wastewater letter describes the wastewater plan. It was reviewed by Bill Wilcox whose opinion is that the plan is reasonable. If the facility exceeds the approved flow of the 11-bedroom septic, then the applicant would come back and revisit nitrogen reduction possibilities. The septic will need a concrete slab over it.
- The commercial kitchen is for the use of the church.
- The structural code letter states that the work will be carried out in accordance with all state building codes and the energy codes will be better.
- The renovation letter states that work will commence within six months of the approval or registration.
- Project statistics includes relevant numbers.
- The pastor has not been able to speak with neighbors.

- They have tried to answer questions and make the project reasonable. They've defined something that's doable and will be good for the community.

There was a discussion of the scheduling of special activities and services.

- **John Breckenridge** asked about how many people would be attending what they've defined as special activities.
- **Pastor Carvalho** — said they had five special activities last year. They don't anticipate more than two a month maximum. A special activity might be celebrating a church anniversary or services by visiting pastors. He anticipates between 100 and 150 could attend.
- **Doug Sederholm** asked for clarification of the service schedule.
- **Pastor Carvalho** said that church services are two times a week: Wednesday and Sunday night. Sunday morning is Sunday school. On Monday there is Bible study now with 12 people. Friday is music class/choir practice now with 8 people. There are no residents. There are no dances or social events of a public nature; there may be weddings.
- **Mark London** suggested that staff work with the applicant to reword the offers to leave the applicant some flexibility, but make a clear statement.

Pastor Carvalho responded to Commissioner questions and made the following clarifications.

- After church services, no one would be staying later than 11:00 p.m.
- Exterior lighting would only be used when they are actually in the building and the lights will be off after service. Lighting will be 18" high with timers.
- The stockade fence between the church and neighbors will be six feet high.
- He expects one or two weddings a year. In seven years he's done five weddings in homes, two in the church.

John Breckenridge suggested that Mark London review the minutes from March 9, 2006, in reference to World Revival Church and the language about special events attendance.. It's important to be as precise as possible and avoid averages.

There was a discussion of meeting neighbors.

- **Kathy Newman** said communication with neighbors is still an issue. It's going to be important for her in the end to know that communication with neighbors is a priority.
- **Pastor Carvalho** said they tried to meet, but they've been unable to find a meeting time. He would like to gather everyone together. He will try in the next week to get people together.
- **Susan Shea** said for the months that the project has been under review, she's been asking that the applicant have a meeting with the neighbors. It's important for people to know what's going on and make adjustments so everyone can be happy.

James Weisman clarified information about the fence.

- The fence will be along the border of the Ryan's Way and the Mormon property. What's described in the plan supersedes what's written in the document.
- The purpose of the fence is for safety. It will be on the sides where there are roads.

- The fence will be natural red cedar and unpainted. The intention is to make it unnoticeable.

There was a discussion about the landscaping.

- **Chris Murphy** asked about the proposed tree planting. If they're trying to buffer the building from the road, the wording needs to describe a more or less impervious border, rather than a series of trees.
- **Linda Sibley** said that because the field is fairly open, pitch pine, which require sun, can be planted on the edge on the southern side. Holly and white pine can be planted, as well as native shrubs. If you put in a reasonable amount of screening, that will distract the eye.
- **Paul Foley** said the whole property used to be wooded.
- It was explained that the clearing was done when the septic was updated to Title 5 specifications. **Paul Foley** asked why they had to clear the whole front for the septic.
- **Doug Sederholm** said there are no churches on the Island that are totally invisible from the main road. A reasonable amount of screening is enough.
- **James Weisman** said that they intend to create more screening along Ryan's Way.
- **Mark London** suggested that the Commission the applicant's proposal to reduce the no-cut zone to only 25' to what has been done on other churches; the Commission insisted on a 50' no-cut zone for Kingdom Hall and the Church of Latter Day Saints is offering a buffer more than a hundred feet deep. The Edgartown-Vineyard-Haven Road is now on the borderline between having the appearance of a rural road and a more suburban-style road dominated by development.
- **James Weisman** clarified that the fence is 25 feet from the property line, and 35 feet from the edge of the bicycle path. Outside the fence would be heavily planted. Inside the fence could have trees.
- **John Breckenridge** said a landscape plan would be helpful; quantity by species would be helpful, too. Along Ryan's Way, planting would be understory of heights of 6 to 8 feet.
- **Mark London** said the Commission in its decision should give guidance on what the landscape plan should achieve, to give guidance to the applicant and LUPC.
- **Ned Orleans** said the issue of preserving a no-cut zone has been dealt with many times, and it would be useful if the Commission had a clear policy that could be given to applicants.

Mark London said the applicant should clarify signage and energy efficiency. **Peter Cabana** suggested contacting Cape Light Compact for energy efficiency. **James Weisman** said they could aim for 20% above code and make use of solar energy.

4.3 Public Comment

Preston Averill, Ryan's Way, asked for some points to be clarified.

- The address of the building is Ryan's Way, not Edgartown Road. Ryan's Way is a private road controlled by a homeowner's association.
- If the church takes access through the Mormon property, will they release access through Ryan's Way? **James Weisman** confirmed that they will.

- He's always wondered about Oak Bluffs' definition of a home business and wonders if day care falls into the definition.
- He asked about the use of a commercial kitchen and what it might lead to.
- The plan shows an outbuilding on the property line. What would the building would be used for and is it permitted and legal?
- Where do the neighbors go if things start to happen?

Russ Wendt, 19 Ryan's Way, said that the Commission has asked Mr. Carvalho to contact neighbors. He specifically gave Pastor Carvalho his number and hasn't heard from him.

- This is about the neighbors and neighborhood and 1 Ryan's Way.
- Traffic with a project of this intensity is a big issue. There is a blind curve.
- They have a curb cut of 80 feet. There is traffic coming in and out and people are backing into Ryan's Way.
- He hasn't seen a traffic pattern. Traffic's going to happen all at once. The neighborhood is getting traffic all at one time. We need a traffic analysis. The analysis by Jim Miller is totally erroneous.
- The wastewater is cumulative to all uses on that property which is the day care, residents, church, community center, and commercial kitchen. Just because there's a big system in place doesn't mean there's not a nitrogen issue.
- Ryan's Way has a water pressure issue. He asked how this project would affect water pressure. There's a basic assumption that use at the project site will be the same as in 2006, which he believes is wrong.
- It might be advisable to get a statement from the water superintendent on the impact of this project.
- Related to the building, they haven't seen engineering drawings of the load of 150 people on the second floor. He thinks that's important.
- It's important to have an accurate understanding of the previous uses of the building.
- A soccer field would cause traffic, noise, and it would be unsightly. He asked whether the site is a church and athletic center or a multi-function center. It's a residential neighborhood
- The church is growing. Mr. Carvalho is going for 150 seats. There's no owner on site and no one responsible on site. He hasn't seen anyone pick up trash. He'd like to know who is going to manage the property.
- The Oak Bluffs Building inspection has said that the Commission review should encompass all uses. R-3 zoning is supposed to be for a low-density single-family neighborhood.
- The neighbors have a huge project coming in that hasn't been discussed with them.
- They haven't seen a report from the fire department on fire lanes.
- There was a massive amount of tree cutting for the play area. Trees were cut for the septic upgrade to 11 bedrooms, which he believes was not required but which was done so they could have an 11-room boarding house. They haven't seen that an 11-room boarding house was even functioning.
- They haven't seen articles of organization. We don't know what the purpose of the church is.

- Outside landscaping is non-existent. There's been nothing done in the last year and a half, aside from cutting trees.
- There is a statement that the site was a dance studio and an 11-room boarding house, but the dance studio was eliminated and the boarding house was added. The traffic study was based on the fact that they were there at the same time, so the study is erroneous.
- The same conclusions come with the wastewater proposal.
- There's a cease and desist generated in June 2007, which hasn't been enforced. There should be some correspondence from the Oak Bluffs building inspector. The building inspector requested that the Commission review all uses.
- The World Revival Church is not doing Mr. Carvalho and his church any favors by not abiding with the decision of the Commission.
- There should be some thought about what's going on in this area. The YMCA, the Mormon Church and the World Revival Church are large projects. Parcel S across the street could be 40 or 50 affordable houses generating a lot of traffic.
- Regarding wastewater, the wastewater Superintendent controls who can tie in to the Island system. It would be nice to know if the project can or can't tie in.
- The Dover Amendment doesn't apply in this case because it's not a single family dwelling;
- He quoted from the document related to the impact of the project.
- He's speaking for himself with some thoughts from neighbors. The neighbors are willing to talk and listen. He hopes Mr. Carvalho and his party are willing to listen.
- When he went home from the last meeting at 11:30 p.m., the lights at World Revival were on. They also haven't complied with landscaping.
- He asked the Oak Bluffs building inspector what the code for exterior lighting is, and he didn't say.
- He encouraged the Commission to be specific about the requirements. He will want to know the rules and regulations of the project and who is responsible.

Jim Athearn asked if Mr. Went could state specifically what bothers him most about the proposed church. **Russ Wendt** said it is the impact of the enormity, the size and the traffic, and the lack of control on the impact; it's discrimination against the residential property rights; there has to be something that regulates businesses; 150 people don't drive 25 cars to get to church; the property is 1.4 acres; he's concerned about lack of control and who exactly is responsible.

Ann McManus said she agrees with Russ Wendt. Their biggest concern is that the neighbors don't have any input. Once the Commission decides, the neighbors have no input. The neighbors don't seem to be listened to.

- There has to be some accountability from the applicant to the Commission or Oak Bluffs.
- She believes that there should be a statement that a Certificate of Occupancy won't be issued until all conditions are met.
- She believes that a performance bond should be required.
- There should be consequences.
- World Revival Church hasn't done what the Commission asked them to do. It's always an excuse.

- Property values are going down. The neighborhood is in the middle of church alley. The churches really are operating seven days a week. Churches are used as community centers. The neighbors don't have any rights and are not considered at all.
- It's time that neighbors are considered.
- Impact is the big issue. There's more than one service. These types of churches operate seven days a week. There are services at night. Sometimes they're active after midnight and lights are on all the time. Lights are not on a timer.
- She has to compete for the use of her yard.
- She lives behind the World Revival Church.

Paul Foley noted that the World Revival Church is supposed to be receiving \$14,000 worth of plants next week.

Chris Murphy asked Richard Toole to emphasize that Commissioners don't take public comment and letters lightly.

Darren Reubens of Terrain Associates said he was thinking about communication between the pastor and neighbors. There's a lot of sense in what the neighbors are saying. Perhaps the architect should go over everything with pastor and neighbors, about how things will proceed and how things will be organized. He promised that they would call the neighbors.

Ann McManus said she is skeptical that communication will happen because of the experience with the World Revival Church.

Mac Stark said it's not their responsibility – when they built their house, they dealt with the town of Oak Bluffs, not the neighbors. It's not the neighbors' responsibility to deal with the church.

- It's the Commission's responsibility to approve the project. It's Oak Bluffs' responsibility to oversee it.
- The Commission and Town don't know what each other is doing and his rights are being violated as a result. The project the Commission approved and Oak Bluffs is not overseeing is impacting his rights. If the project isn't being done; it's the Commission and Town's job to get it done.

Anthony Capelli, Ryan's Way, is an abutter to the south. He is annoyed with the whole process, from March 2007 when the church applied for the daycare to today. No one's been in touch with him, but they blame the pastor. He did receive a hearing notice. It's been a long process.

Doug Sederholm clarified that the Dover Amendment has two distinct elements: you can't control the size of a single-family house through zoning by-laws, and secondly, you cannot prohibit churches from locating in any area, though you can reasonably regulate some aspects of how it is installed.

Christina Brown added that some people in Dover had said that their zoning did not allow churches. The Dover Amendment says local boards can put reasonable restrictions on churches, but they can't prohibit churches. In this case, Oak Bluffs and the Commission are looking at putting reasonable restrictions on this church.

Anthony Cappelli said they've seen a cease and desist order that the basement can't be used. Why are the neighbors pitted against this property and other people aren't enforcing it.

- The Oak Bluffs Building Inspector said he issued the cease and desist and they have to comply. He said he's not going to check if people are going up and down stairs as residents.
- Functions go on outside and the neighbors are impacted.

Ned Orleans said it seems that the real question is both impact and lack of enforcement.

- He said the nature of enforcement on Martha's Vineyard is that the citizen is the quality controller. That's how things get enforced because doing it any other way is too expensive and we're not going to pay for it.
- He suggested that the Commission and Town clarify their relationship and explain this to the public. The Commission makes a decision and includes offers and conditions. The town has certain boards that go through the same process.

Anthony Cappelli added that he's annoyed with the whole process.

Mac Stark said he would like to apologize to the Commission and to Oak Bluffs. He will look at the churches and he'll say this is reality.

Ann McManus said she's been to the town administrator, the selectmen, the building inspector who said that he will not deny a CO for a bunch of trees or lights not being downward shielded. When there's a noise issue, the police say it's a church so they can't do anything.

Richard Toole said everyone's frustrated and Commissioners are hearing what people are saying.

4.4 Commissioner Questions

There was a discussion of the possibility of shared access with the Church of Latter Day Saints (Mormons).

- **Mimi Davisson** asked if the church had been in touch with the Mormon's about access.
- **Pastor Carvalho** said they talked with the Mormon Church who asked for a letter. They sent a letter but haven't received a response.
- **Mimi Davisson** said she would be interested in the church's arranging to implement the access so Ryan's Way can be closed off.
- **Mark London** said if Commissioners feel that should happen, it's important to express that clearly to the Mormon Church.
- **Chris Murphy** said that the lot has access onto Vineyard Haven Road, but it's not a legal access. The lot has legal access to Ryan's Way. The Mormon Church has a right to a curb cut. A joint road could benefit them both. In dealing with this application, the Commission has left the door open for the possibility but the Commission doesn't have the ability to force the issue.
- **John Breckenridge** said the issue was raised with the Mormon Church at an LUPC meeting. He suggested that staff get in touch with them.
- **Paul Foley** said the Mormon Church indicated that they were not interested.

- **Mark London** said that the Commission would have to make it clear that there would be a regional benefit for the Mormon site to flip their access around from several points of view. By allowing a shared access with Nova Vida, it would allow closing the latter's access to Ryan's Way, which would be a great benefit to the neighborhood. Secondly, it would allow the preservation of a habitat buffer along the high school property; this edge could become the main link between the State Forest and the Southern Woodlands.
- **Mimi Davisson** said the Commission should be considering the impact of traffic flow when the whole area is developed.

Mimi Davisson said another concern is 150 people in 2500 square feet. It seems like a lot of people in a small space and a lot of need for automobiles that aren't accommodated. Fire and safety are also issue issues. She's interested in whether this is going to be a safe building.

John Breckenridge said that Mass State Building Code would address capacity.

Jim Powell recommended that staff contact the Mormon Church. He'd be very interested in relieving traffic on Ryan's Way. Each of the neighbors' concerns needs to be addressed in concrete way.

Jim Athearn commented that traditionally churches have been in town; in modern times, churches are moving out; he wondered if the church has considered an in-town property. **Pastor Carvalho** said that before he bought the building, he and his lawyer went to the Town; the Town said the property would be fine for use as a church. Nine months later the cease and desist came up for the hospital day care center.

Linda Sibley said churches used to be in town and serve the neighborhood. Now churches serve people from all over the Island and those people are dependent on cars. The Dover amendment didn't consider churches and traffic as regional nor had it considered late night services.

There was a discussion of evening activity.

- **Linda Sibley** said that the night activity is one aspect that causes a real problem in a residential neighborhood. She asked whether services could start earlier and end earlier.
- **Pastor Carvalho** said in winter, the service starts at 6:00 p.m. However, everybody's working in the summer so they start later.
- **Linda Sibley** suggested that finishing by 10:00 p.m. would do a real service to the neighborhood.
- **Mark London** said the Commission doesn't generally encourage air conditioning, but, in this case, as in the World Revival Church, they offered to install air conditioners and keep the windows closed to minimize noise impacts on the neighborhood.
- **Ann McManus** said the World Revival Church keeps their windows open anyway.

Richard Toole listed the issues that have been raised.

- Zoning, including how the proposal fits with under home/business by-law.
- Commercial kitchen,
- Wastewater treatment system.
- Water pressure.

- Structural integrity.
- Fire department.
- We need to hear from the building official, Jerry Weiner, and the Fire official.
- We need to be clear on reviews at town level. **Peter Cabana** suggested that town officials come in and tell what they will do for review.
- Capacity, in relation to impacts on parking and traffic
- Enforcement.

Kathy Newman suggested that the Commission focus on the regional issues. Some of the questions that have been raised are specifics that will be dealt with by the Town.

Richard Toole said that at this moment, he is not sure he could vote for the project.

Richard Toole continued the hearing to June 12th.

Mark London said he had a general discussion with Jerry Wiener about enforcement; he would be happy to discuss with the Commission how decisions could be set up to make it easier for him to enforce conditions, such as tying them into the certificate of occupancy. He suggested asking Jerry Wiener if he could clarify the Nova Vida situation, and ideally attend the next hearing.

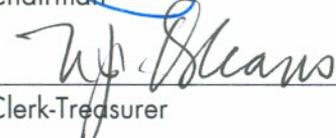
Ned Orleans noted that the enforcement issue is not specific to this project, but should be considered as an Island-wide issue.

Mimi Davisson pointed out that Max Stark has run for selectmen twice in Oak Bluffs and is very committed. She also mentioned that there had been an opening on the planning board and no one signed up. It's important that we encourage people to run for positions so they can influence town issues.

Doug Sederholm said the Commission has to take some real action about enforcement. He appointed a small committee to discuss the issue. The Commission does have injunctive power and he's not afraid to use it. He appointed Chris Murphy, Doug Sederholm, Linda Sibley, Mimi Davisson, and Christina Brown.

The meeting adjourned at 10:00 p.m.



 Chairman


 Clerk-Treasurer

12-18-08

 Date
1-22-09

 Date